

By Senator Gruters

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A bill to be entitled

An act relating to the Citizens Property Insurance Corporation; amending s. 627.351, F.S.; requiring the corporation to charge a specified premium on certain risks; specifying that the premium for subsequent renewals of a corporation policy is subject to certain requirements; providing an exception; amending s. 627.3518, F.S.; deleting an obsolete provision; defining terms; revising the definition of the term "program"; requiring the corporation to establish a personal lines clearinghouse for specified purposes; requiring, on or before a specified date, the corporation to implement a commercial lines clearinghouse for specified purposes; requiring, on or before a specified date, the corporation to develop and implement certain procedures; deleting reporting requirements; revising the rights and responsibilities the corporation has in establishing the program; authorizing approved surplus lines clearinghouse insurers to participate in the commercial lines clearinghouse; prohibiting such insurers from participating in the personal lines clearinghouse; specifying that participation in the program is not mandatory for such insurers; revising prohibitions and requirements for insurers making offers of coverage to new applicants or renewal policyholders through the program; providing construction; specifying that applicants for new commercial lines residential coverage are not eligible for coverage from the

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corporation under certain circumstances; deleting the definition of the term "primary residence"; specifying the circumstances under which policyholders of the corporation are not eligible for commercial lines residential coverage with the corporation; authorizing applicants or insureds to elect to accept coverage with specified insurers or elect to accept or continue coverage with the corporation under certain circumstances; authorizing insureds to elect to accept coverage with specified insurers or elect to accept or continue coverage with the corporation under certain circumstances; providing applicability; specifying that certain applicants remain eligible for coverage from the corporation; authorizing such applicants to elect to accept coverage with specified insurers or elect to accept or continue coverage with the corporation; requiring certain applicants to pay a specified premium for corporation coverage; providing applicability; revising the rights and authorizations for certain independent insurance agents; deleting a prohibition relating to commercial nonresidential policies; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Paragraph (oo) is added to subsection (6) of section 627.351, Florida Statutes, to read:

627.351 Insurance risk apportionment plans.—

(6) CITIZENS PROPERTY INSURANCE CORPORATION.—

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(oo) The corporation must charge a premium on a commercial residential or commercial nonresidential risk that has received an offer of coverage under s. 627.3518(5)(c)2., which premium is the greater of the premium offered by the approved surplus lines clearinghouse insurer for such coverage or the premium for coverage from the corporation calculated pursuant to paragraph (n). The premium for subsequent renewals of a corporation policy that is charged a premium equivalent to the premium offered by an approved surplus lines insurer under s. 627.3518(5)(c)2. is subject to the requirements of paragraph (n) as applied to the premium that was applied pursuant to this paragraph, unless the risk receives an offer at the subsequent renewal under s. 627.3518(5)(c)2., in which case the premium shall be the greater of the premium offered at the subsequent renewal by the surplus lines insurer or the corporation's premium on the risk.

Section 2. Section 627.3518, Florida Statutes, is amended to read:

627.3518 Citizens Property Insurance Corporation policyholder eligibility clearinghouse program.—The purpose of this section is to provide a framework for the corporation to implement a clearinghouse program ~~by January 1, 2014.~~

(1) As used in this section, the term:

(a) "Approved surplus lines clearinghouse insurer" means an eligible surplus lines insurer that has a financial strength rating of "A-" or higher from A.M. Best Company and that the corporation determines has demonstrated competence in writing the types of risks for which it will make offers of coverage through the program.

(b) "Corporation" means Citizens Property Insurance

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88 Corporation.

89 (c)~~(b)~~ "Exclusive agent" means any licensed insurance agent
90 that has, by contract, agreed to act exclusively for one company
91 or group of affiliated insurance companies and is disallowed by
92 the provisions of that contract to directly write for any other
93 unaffiliated insurer absent express consent from the company or
94 group of affiliated insurance companies.

95 (d)~~(e)~~ "Independent agent" means any licensed insurance
96 agent not described in paragraph (c) ~~(b)~~.

97 (e) "Primary residence" has the same meaning as in s.
98 627.351(6)(c)2.a.

99 (f)~~(d)~~ "Program" means the clearinghouse created under this
100 section, consisting of the personal lines clearinghouse and the
101 commercial lines clearinghouse.

102 (g) "Surplus lines agent" means an insurance agent licensed
103 pursuant to s. 626.927 or s. 626.9272.

104 (2)(a) The corporation shall establish a personal lines
105 clearinghouse ~~in order~~ to confirm an applicant's eligibility
106 with the corporation, and to enhance access of new applicants
107 for personal lines coverage and existing personal lines
108 policyholders of the corporation to offers of coverage from
109 authorized insurers, and ~~the corporation shall establish a~~
110 ~~program for personal residential risks in order~~ to facilitate
111 the diversion of ineligible applicants and existing
112 policyholders from the corporation into the voluntary insurance
113 market.

114 (b) The corporation shall implement, on or before January
115 1, 2027, a commercial lines clearinghouse in order to enhance
116 new applicants access to commercial residential coverage and

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117 commercial nonresidential coverage and existing policyholders of
118 the corporation to offers of coverage from approved surplus
119 lines clearinghouse insurers. The corporation shall also develop
120 and implement, on or before January 1, 2028, appropriate
121 procedures for facilitating the diversion of new ~~ineligible~~
122 applicants and existing policyholders of the corporation to
123 offers of commercial residential and commercial nonresidential
124 coverage from authorized insurers ~~for commercial residential~~
125 ~~coverage into the private insurance market and shall report such~~
126 ~~procedures to the President of the Senate and the Speaker of the~~
127 ~~House of Representatives by January 1, 2014.~~

128 (3) The corporation board shall establish the ~~clearinghouse~~
129 program as an organizational unit within the corporation. The
130 program shall have all the rights and responsibilities in
131 carrying out its duties as a licensed general lines agent and a
132 surplus lines agent, but may not be required to employ or engage
133 a licensed general lines agent or a surplus lines agent, or to
134 maintain an insurance agency license to carry out its activities
135 in the solicitation and placement of insurance coverage. In
136 establishing the program, the corporation has all of the
137 following rights and responsibilities ~~may~~:

138 (a) May require all new applications, and all policies due
139 for renewal, to be submitted for coverage to the program in
140 order to facilitate obtaining an offer of coverage from an
141 authorized insurer or, if the risk is a commercial risk,
142 obtaining an offer of coverage from an approved surplus lines
143 clearinghouse insurer, before binding or renewing coverage by
144 the corporation.

145 (b) May employ or otherwise contract with individuals or

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other entities for appropriate administrative or professional services to effectuate the plan within the corporation in accordance with the applicable purchasing requirements under s. 627.351 and, for purposes of implementing the commercial lines clearinghouse and providing offers of coverage from approved surplus lines clearinghouse insurers on or before January 1, 2028, contract with such individuals or entities in accordance with s. 287.057(3)(c).

(c) May enter into contracts with any authorized insurer and any approved surplus lines clearinghouse insurer to participate in the program and accept an appointment by such insurer.

(d) May provide funds to operate the program. Insurers and agents participating in the program are not required to pay a fee to offset or partially offset the cost of the program or use the program for renewal of policies initially written through the clearinghouse.

(e) May develop an enhanced application that includes information to assist private insurers in determining whether to make an offer of coverage through the program.

(f) For personal lines residential risks, may require that, before approving all new applications for coverage by the corporation, ~~that~~ every application be subject to a period of 2 business days when any insurer participating in the program may select the application for coverage. The insurer may issue a binder on any policy selected for coverage for a period of at least 30 days but not more than 60 days.

(g) Shall, in creating the commercial lines clearinghouse, establish criteria to determine the capabilities necessary to

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effectively provide and manage the commercial lines clearinghouse. For facilitating offers of surplus lines coverage, such criteria must include confirmed expertise in the surplus lines market, at least 5 years of publicly available audited financial statements, the ability to facilitate all approved surplus lines clearinghouse insurers to participate in the commercial lines clearinghouse on terms established by the corporation, and other criteria that the corporation determines necessary to effectively establish and manage offers of surplus lines coverage through the commercial lines clearinghouse.

(4) Any authorized insurer may participate in the program; however, participation is not mandatory for any insurer. Approved surplus lines clearinghouse insurers may participate in the commercial lines clearinghouse but may not participate in the personal lines clearinghouse; however, participation in the program is not mandatory for any approved surplus lines insurer. Insurers making offers of coverage to new applicants or renewal policyholders through the program:

(a) May not be required to individually appoint any agent whose customer is underwritten and bound through the program. Notwithstanding s. 626.112, insurers are not required to appoint any agent on a policy underwritten through the program for as long as that policy remains with the insurer. Insurers may, at their election, appoint any agent or surplus lines agent whose direct or indirect customer is initially underwritten and bound through the program. In the event an insurer accepts a policy from an agent who is not appointed pursuant to this paragraph, and thereafter elects to accept a policy from such agent, the provisions of s. 626.112 requiring appointment apply to the

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agent.

(b) Must enter into a limited agency agreement with each agent or surplus lines agent that is not appointed in accordance with paragraph (a) and whose customer is underwritten and bound through the program. In addition, a surplus lines agent that enters into a limited agency or broker agreement with an approved surplus lines clearinghouse insurer making an offer of coverage through the program must also enter into a limited agency or broker agreement with each producing agent whose customer is underwritten and bound through the program.

(c) Must enter into its standard agency agreement with each agent or surplus lines agent whose customer is underwritten and bound through the program when that agent or surplus lines agent has been appointed by the insurer pursuant to s. 626.112.

(d) Must comply with s. 627.4133(2) or, if the insurer is an approved surplus lines clearinghouse insurer, s. 626.9201.

(e) May participate through their single-designated managing general agent or broker; however, the provisions of paragraph (6)(a) regarding ownership, control, and use of the expirations continue to apply.

(f) For authorized insurers, must pay to the producing agent a commission equal to that paid by the corporation or the usual and customary commission paid by the insurer for that line of business, whichever is greater.

(g) For approved surplus lines clearinghouse insurers, must pay a commission on premiums, exclusive of fees, surcharges, and taxes, to the surplus lines agent, managing general agent, or managing general underwriter placing the risk. The surplus lines agent, managing general agent, or managing general underwriter

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233 must pay the producing agent a commission at least equal to the
234 commission the corporation pays agents for coverage, calculated
235 in the same manner and on the same basis used by the
236 corporation, and shall retain the remainder of the total
237 commission or equivalent compensation. This paragraph does not
238 prohibit an agent from voluntarily accepting a lower commission
239 at the agent's sole discretion.

240 (5) (a) Notwithstanding s. 627.3517, any applicant for new
241 personal lines coverage from the corporation is not eligible for
242 coverage from the corporation if provided an offer of comparable
243 coverage from an authorized insurer through the program at a
244 premium that is at or below the eligibility threshold for
245 applicants for new coverage of a primary residence established
246 in s. 627.351(6)(c)5.a., or for applicants for new coverage of a
247 risk that is not a primary residence established in s.

248 627.351(6)(c)5.b. Whenever an offer of comparable coverage for a
249 personal lines risk is received for a policyholder of the
250 corporation at renewal from an authorized insurer through the
251 program which is at or below the eligibility threshold for
252 primary residences of policyholders of the corporation
253 established in s. 627.351(6)(c)5.a., or the eligibility
254 threshold for risks that are not primary residences of
255 policyholders of the corporation established in s.

256 627.351(6)(c)5.b., the risk is not eligible for coverage with
257 the corporation. In the event an offer of coverage for a new
258 applicant is received from an authorized insurer through the
259 program, and the premium offered exceeds the eligibility
260 threshold for applicants for new coverage of a primary residence
261 established in s. 627.351(6)(c)5.a., or the eligibility

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threshold for applicants for new coverage on a risk that is not a primary residence established in s. 627.351(6)(c)5.b., the applicant or insured may elect to accept such coverage, or may elect to accept or continue coverage with the corporation. In the event an offer of coverage for a personal lines risk is received from an authorized insurer at renewal through the program, and the premium offered exceeds the eligibility threshold for primary residences of policyholders of the corporation established in s. 627.351(6)(c)5.a., or exceeds the eligibility threshold for risks that are not primary residences of policyholders of the corporation established in s. 627.351(6)(c)5.b., the insured may elect to accept such coverage, or may elect to accept or continue coverage with the corporation. Section 627.351(6)(c)5.a.(I) and b.(I) does not apply to an offer of coverage from an authorized insurer obtained through the program. ~~As used in this subsection, the term "primary residence" has the same meaning as in s. 627.351(6)(c)2.a.~~

(b) Notwithstanding s. 627.3517, an applicant for new commercial lines residential coverage from the corporation is not eligible for coverage from the corporation if the applicant is provided an offer of comparable coverage from an authorized insurer through the program at a premium that is at or below the eligibility threshold for applicants for new coverage established in s. 627.351(6)(c)5.c. Whenever an offer of comparable coverage for a commercial lines residential risk is received for a policyholder of the corporation at renewal from an authorized insurer through the program which is at or below the eligibility threshold in s. 627.351(6)(c)5.c., the risk is

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not eligible for coverage with the corporation. In the event an offer of coverage for a new applicant is received from an authorized insurer through the program, and the premium offered exceeds the eligibility threshold established in s. 627.351(6)(c)5.c., the applicant or insured may elect to accept such coverage or to accept or continue coverage with the corporation. In the event an offer of coverage for a commercial lines residential risk is received from an authorized insurer at renewal through the program, and the premium offered exceeds the eligibility threshold for policyholders of the corporation established in s. 627.351(6)(c)5.c., the insured may elect to accept such coverage or to accept or continue coverage with the corporation. Section 627.351(6)(c)5.c.(I) does not apply to an offer of coverage from an authorized insurer obtained through the program.

(c)1. Except as provided in subparagraph 2., any applicant for new coverage from the corporation and any policyholder of the corporation that is offered commercial lines residential or commercial lines residential coverage pursuant to the program by an approved surplus lines clearinghouse insurer remains eligible for coverage from the corporation. The applicant or insured receiving an offer from an approved surplus lines clearinghouse insurer may elect to accept such coverage or may elect to accept or continue coverage with the corporation.

2. Any applicant for new coverage from the corporation and any policyholder of the corporation that is offered commercial lines residential or commercial lines nonresidential coverage by an approved surplus lines insurer pursuant to the program, if such coverage is equivalent to or greater than coverage from the

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corporation as to all aspects of such coverage and is for a premium that is not more than 20 percent greater than the premium for corporation coverage that will be paid by an applicant for corporation coverage or will be paid at renewal by a policyholder of the corporation, may elect to accept such coverage from the approved surplus lines clearinghouse insurer or may elect to accept or continue coverage with the corporation, but, if electing corporation coverage, such applicant or policyholder must pay a premium for corporation coverage that is the greater of the premium for such coverage from the corporation or from the approved surplus lines clearinghouse insurer.

3. Section 627.351(6)(c)5.c.(I) does not apply to an offer of coverage from an approved surplus lines clearinghouse insurer obtained through the program.

(6) Independent insurance agents submitting new applications for coverage or that are the agent of record on a renewal policy submitted to the program:

(a) Are granted and must maintain ownership and the exclusive use of expirations, records, or other written or electronic information directly related to such applications or renewals written through the corporation or through an insurer participating in the program, notwithstanding s. 627.351(5)(a), s. 627.351(6)(c)5.a.(I)(B) and (II)(B), or s. 627.351(6)(c)5.b.(I)(B) and (II)(B). Such ownership is granted for as long as the insured remains with the agency or until sold or surrendered in writing by the agent. Contracts with the corporation, ~~or~~ or required by the corporation, or with any insurer or surplus lines agent must not amend, modify, interfere with,

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or limit such rights of ownership. Such expirations, records, or other written or electronic information may be used to review an application, issue a policy, or for any other purpose necessary for placing such business through the program.

(b) May not be required to be appointed by any insurer participating in the program for policies written solely through the program, notwithstanding the provisions of s. 626.112.

(c) May accept an appointment from any insurer participating in the program.

(d) May enter into either a standard or limited agency agreement with the insurer, at the insurer's option, and may enter into agreements with a surplus lines agent.

Applicants ineligible for coverage in accordance with subsection (5) remain ineligible if their independent agent is unwilling or unable to enter into a standard or limited agency agreement with an insurer participating in the program.

(7) Exclusive agents submitting new applications for coverage or that are the agent of record on a renewal policy submitted to the program:

(a) Must maintain ownership and the exclusive use of expirations, records, or other written or electronic information directly related to such applications or renewals written through the corporation or through an insurer participating in the program, notwithstanding s. 627.351(6)(c)5.a.(I)(B) and (II)(B) or s. 627.351(6)(c)5.b.(I)(B) and (II)(B). Contracts with the corporation or required by the corporation must not amend, modify, interfere with, or limit such rights of ownership. Such expirations, records, or other written or

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electronic information may be used to review an application,
issue a policy, or for any other purpose necessary for placing
such business through the program.

(b) May not be required to be appointed by any insurer
participating in the program for policies written solely through
the program, notwithstanding the provisions of s. 626.112.

(c) Must only facilitate the placement of an offer of
coverage from an insurer whose limited servicing agreement is
approved by that exclusive agent's exclusive insurer.

(d) May enter into a limited servicing agreement with the
insurer making an offer of coverage, and only after the
exclusive agent's insurer has approved the limited servicing
agreement terms. The exclusive agent's insurer must approve a
limited service agreement for the program for any insurer for
which it has approved a service agreement for other purposes.

Applicants ineligible for coverage in accordance with subsection
(5) remain ineligible if their exclusive agent is unwilling or
unable to enter into a standard or limited agency agreement with
an insurer making an offer of coverage to that applicant.

(8) Submission of an application for coverage by the
corporation to the program does not constitute the binding of
coverage by the corporation, and failure of the program to
obtain an offer of coverage by an insurer may not be considered
acceptance of coverage of the risk by the corporation.

(9) The 45-day notice of nonrenewal requirement set forth
in s. 627.4133(2)(b)5. applies when a policy is nonrenewed by
the corporation because the risk has received an offer of
coverage pursuant to this section which renders the risk

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ineligible for coverage by the corporation.

(10) ~~The program may not include commercial nonresidential policies.~~

~~(11)~~ Proprietary business information provided to the corporation's clearinghouse by insurers with respect to identifying and selecting risks for an offer of coverage is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

(a) As used in this subsection, the term "proprietary business information" means information, regardless of form or characteristics, which is owned or controlled by an insurer and:

1. Is identified by the insurer as proprietary business information and is intended to be and is treated by the insurer as private in that the disclosure of the information would cause harm to the insurer, an individual, or the company's business operations and has not been disclosed unless disclosed pursuant to a statutory requirement, an order of a court or administrative body, or a private agreement that provides that the information will not be released to the public;

2. Is not otherwise readily ascertainable or publicly available by proper means by other persons from another source in the same configuration as provided to the clearinghouse; and

3. Includes:

a. Trade secrets, as defined in s. 688.002.

b. Information relating to competitive interests, the disclosure of which would impair the competitive business of the provider of the information.

Proprietary business information may be found in underwriting

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criteria or instructions which are used to identify and select risks through the program for an offer of coverage and are shared with the clearinghouse to facilitate the shopping of risks with the insurer.

(b) The clearinghouse may disclose confidential and exempt proprietary business information:

1. If the insurer to which it pertains gives prior written consent;

2. Pursuant to a court order; or

3. To another state agency in this or another state or to a federal agency if the recipient agrees in writing to maintain the confidential and exempt status of the document, material, or other information and has verified in writing its legal authority to maintain such confidentiality.

Section 3. This act shall take effect upon becoming a law.